

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TIMOTHY A. MAUK

Plaintiff,

vs.

No. CIV 99-1248 LCS

**PRESBYTERIAN HEALTH PLAN,
NANCY DOTY, ROBERT MIDDLETON,
and RENEE VIGIL,**

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for consideration of Individual Defendants' Motion to Dismiss for Failure to State a Claim (*Doc. 5*), filed November 22, 1999. The Court has reviewed the motion, the memoranda submitted by the individual defendants, and the relevant authorities. The Court finds that the motion is well taken and will be granted.

Plaintiff has not filed a response to the motion within the time period required by Local Rule D.N.M. LR-Civ. 7.6. According to Local Rule D.N.M. LR-Civ. 7.5(b), failure to serve a response in opposition to any motion constitutes consent to grant the motion. Therefore, I find that Plaintiff consents to granting the motion.

I also find that the motion is well taken on its merits. Plaintiff has brought a civil rights suit alleging employment discrimination in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101. The Tenth Circuit has ruled that the ADA prohibits suits against individual supervisors in their personal capacity. *See Butler v. City of Prairie Village*, 172 F.3d 736, 743 (10th

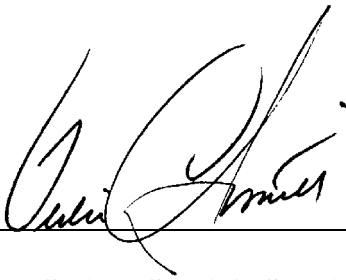
Cir. 1999). Plaintiff can assert his ADA cause of action only against his employer, Defendant Presbyterian Health Plan.

Wherefore,

IT IS ORDERED that the Individual Defendants' Motion to Dismiss for Failure to State a Claim (*Doc. 5*), filed November 22, 1999 is hereby **granted**.

IT IS FURTHER ORDERED that all claims brought against Defendants Nancy Doty, Robert Middleton and Renee Vigil in their individual capacity are **dismissed with prejudice**.

IT IS FINALLY ORDERED that Defendants Nancy Doty, Robert Middleton and Renee Vigil are dismissed from this action. Plaintiff's claims against Defendant Presbyterian Health Plan remain.



UNITED STATES MAGISTRATE JUDGE